

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

THOMAS E. SMITH,

No. 3:14-cv-01741 LB

Plaintiff,

v.

BRAD HOFFMAN, et al.,

Defendants.

**SECOND ORDER (1) DIRECTING
PLAINTIFF TO SHOW CAUSE WHY
THE CASE SHOULD NOT BE
DISMISSED FOR FAILURE TO
PROSECUTE AND (2) CONTINUING
THE INITIAL CASE MANAGEMENT
CONFERENCE**

Thomas Smith filed this action on April 16, 2014. (Complaint, ECF No. 1.) It was initially assigned to Judge Ryu. Mr. Smith purportedly served the defendant Sonoma County Human Services Department/Family Youth and Children's Services, as well as the six individual defendants, on August 21, 2014. (Certificates of Service, ECF No. 10-16.)

The defendants have neither appeared nor answered or otherwise responded to the Complaint. Instead, in his September 14, 2014 case-management-conference statement, Mr. Smith explained that "[b]y letter dated September 9, 2014, counsel for County of Sonoma, Terry Sterling of the firm Spaulding, McCullough & Tansil acknowledged receipt of the service documents, but advised that the proper agent for service had not been served as to the County and as to the individual defendants." (CMC Statement, ECF No. 18 at 2.) Mr. Smith also said that Mr. Sterling's letter "also indicates that the defense counsel requests that Plaintiff agree not to take defaults of any defendants while the parties work out a stipulation regarding the amendment of the complaint such that the all defendants would be in a position to respond to the first amended complaint which, once filed,

1 defense counsel would be in a position to accept service thereof.” (*Id.* at 2-3.) Mr. Smith then
2 requested that the court continue the September 17, 2014 case management conference for 60 days
3 while the parties worked this out. (*Id.* at 3.)

4 Judge Ryu continued the case-management conference to November 5, 2014, presumably to
5 allow the parties to do what they said they were going to do. The action was then reassigned to the
6 undersigned because it is related to another one of the undersigned’s actions. (Order Relating Cases,
7 ECF No. 22.) After that, the court continued the case-management conference three more times
8 because the parties appear to have done nothing and never filed any joint case management
9 conference statements. (*See* Clerk’s Notices, ECF Nos. 24-26.)

10 Because of the apparent lack of movement, on March 9, 2015, this court ordered Mr. Smith to
11 show cause why the case should not be dismissed for failure to prosecute. (First OSC, ECF No. 27.)
12 The court did so because, although the action was filed on April 16, 2014, Mr. Smith still had not
13 served the defendants with the complaint and summons.

14 On March 10, 2015, Mr. Smith’s counsel responded to the order to show cause. (Response to
15 First OSC, ECF Nos. 28, 29.) He explained that he has been facing some personal difficulties of late
16 and that his paralegal, who knows much about this action, has been dealing with a medical problem
17 for the last few months. These things prevented him from drafting, filing, and serving a first
18 amended complaint. He also said that the defendants’ counsel had no objection to the delay in
19 service.

20 Based on Mr. Smith’s counsel’s representations, the court discharged its order to show cause and
21 directed him to file and serve a first amended complaint by April 27, 2015. (3/19/2015 Order, ECF
22 No. 32.)

23 On April 13, 2015, the court’s courtroom deputy received an email from Kristen O’Hagan, who
24 apparently works with Mr. Smith’s counsel. She says that there had been a medical emergency in
25 Mr. Smith’s counsel’s family and he must travel to the east coast. On Mr. Smith’s counsel’s behalf,
26 she asked the court to extend the deadline for filing and serving the First Amended Complaint by 30
27 days. She also asks that the April 23, 2015 case management conference be continued by 30 days as
28 well.

1 The court granted the request. (4/16/2015 Order, ECF No. 33.) The court ordered Mr. Smith
2 shall file and serve the First Amended Complaint by June 1, 2015 and continued the April 23, 2015
3 case management conference to July 2, 2015.

4 It now is June 29, 2015, and neither a First Amended Complaint nor a case management
5 conference statement has been filed. By July 2, 2015, Mr. Smith shall explain, in writing, why he did
6 not file a First Amended Complaint by the court's June 1, 2015 deadline and why this action should
7 not be dismissed for his failure to prosecute it. In light of this order, the court also continues the case
8 management conference from July 2, 2015 to September 10, 2015 at 11:00 a.m.

9 **IT IS SO ORDERED.**

10 Dated: June 29, 2015

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12 LAUREL BEELER
13 United States Magistrate Judge
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